

[REDACTED]
Internal Revenue Service
District Director

[REDACTED]
Department of the Treasury
P.O. Box 2508
Cincinnati, OH 45201

[REDACTED]
Person to Contact:

[REDACTED]
Telephone Number

[REDACTED]
Refer Reply to:

[REDACTED]
Employer Identification Number:

Date: FEB 13 1998

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of Section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

~~_____~~
~~_____~~

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

We have sent a copy of this letter to your authorized representative as indicated in your power of attorney.

Sincerely yours,



C. Ashley Bullard
District Director

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Reasons for Proposed-Denial of Exemption

[REDACTED]
[REDACTED]
You were incorporated [REDACTED] under the laws of [REDACTED]
[REDACTED] Your stated purposes in pertinent part are:

To operate a license fee office and distribute the net profits to those charities supported by the various [REDACTED]
[REDACTED]

Membership in your organization is limited to the [REDACTED]
[REDACTED], [REDACTED], [REDACTED] and [REDACTED]
[REDACTED]. Each [REDACTED] appoint one member and one alternate as a representative to serve on the Board of Directors of the Organization.

Your sole activity consists of operating a license fee office for the [REDACTED]. Any net proceeds from the operation of the license fee office is divided among your four member [REDACTED]
[REDACTED] "maintain and fund their charitable work for veterans and their families..."

Your only source of income is fees received in the operation of the license fee office.

Expenses are those related to the operation of the license fee office and include salaries and wages, occupancy, depreciation and other miscellaneous operating expenses.

Section 1.501(c)(3)-1(a)(1) of the Regulations states:

In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section of the Regulations states:

In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

You do not meet the organizational test described in section 1.501(c)(3)-1(b)(1)(iv) of the Regulations since your purposes are broader than the purposes specified in section 501(c)(3). We requested you amend your Articles of Incorporation to comply with the organizational test. However, to date you have not submitted the required amendment.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which

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[REDACTED]

accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 502 of the Code describes a "feeder organization" as operated for the primary purpose of carrying on a trade or business for profit.

Section 502(a) of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under IRC 501 on the grounds that all of its profits are payable to one or more organizations exempt from taxation under IRC 501.

IRC 502(b) provides that the term "trade or business" shall not include:

- (a) the deriving of rents which would be excluded under IRC 512(b)(3), if IRC 512 applied to the organization;
- (b) any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or
- (c) any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

Rev. Rul. 73-164, 1973-1 C.B. 223, held that a church controlled commercial printing corporation whose business earnings are paid periodically to the church, but which has no other significant charitable activity, is a feeder organization as described in section 502 of the Code and does not qualify for exemption under section 501(c)(3).

Your position to the proposed denial was solicited. You submitted a copy of State statute on the establishment of license fee offices along with a copy of the latest [REDACTED] case interpreting the status of these offices. You contend the offices lessen the burdens of government because the employees of these offices are not in fact state employees.

[REDACTED] of your State statute provides in pertinent part:

that any person who is selected or appointed by the state director of revenue to act as an agent of the department of revenue...and who receives no salary from the department of revenue...shall be authorized to collect from the party requiring such services additional fees as compensation in full and for all services rendered...

M. Kay Stein v. Ray S. James, Director Missouri Department of Revenue 651 S.W.2d 624 provides an understanding of the role of fee agents. The case clearly shows that fee agents are appointed by the

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director of revenue. The governor's staff makes recommendations to the director of revenue concerning the appointment of fee agents. The case states that "recommendation by the governor and his staff is tantamount to appointment."

The case also indicated that in 1981 there were _____ fee agents, _____ of which were civic organizations, and one of which was a municipality. In finding that the fee agents are not public employees, the case indicated that the Department of Revenue does not supervise the daily operations of the fee agencies, does not require the fee agents to account for fees collected and does not supervise the hiring and firing of employees within the offices. Fee agents are not paid by the state and are not required to work in their offices. Fee agents pay all their own expenses, including rent, employees' salaries and office equipment. Fee agents pay self-employment taxes and are not members of the state retirement system. Many fee agents hire others to supervise employees in the fee agent's office and do not participate directly in the operation of the office.

A determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burden, and whether such activities actually "lessen" such governmental burden. Precedent has ruled favorably in cases involving the gift of funds or a donation of services to a governmental unit.

Rev. Rul. 71-29, 1971-1 C.B. 150 held that a grant to a city transit authority for the purpose of maintaining a mass transportation system qualifies as a charitable disbursement in furtherance of an organization's exempt purposes.

Rev. Rul. 70-583, 1970-2 C.B. 114, held that an organization formed to develop and manage community correctional centers for the rehabilitation of prisoners in cooperation with the courts and government custodial agencies qualifies for exemption under IRC 501(c)(3).

Rev. Rul. 85-1, 1985-1 C.B. 177 held that an organization that provides funds to a county's law enforcement agencies to police illegal narcotic traffic lessens the burdens of government and, therefore, is described in IRC 501(c)(3).

You are not as described in Rev. Ruls. 71-29 and 85-1 since you are not donating funds to a governmental unit. You may be distinguished from Rev. Rul. 70-583 since your purpose is to operate a license fee office and distribute the net proceeds to charity. You are not donating services to a governmental unit. The license fee offices are generally operated by individuals. A profit is expected from the operations. Your intent is not to donate services to a governmental unit but rather to make a profit.
